



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR H.B. 2188

insurance; risk management; solvency assessment

Purpose

Adopts the National Association of Insurance Commissioners' (NAIC) Own Risk Solvency and Assessment (ORSA) model regulation.

Background

The NAIC is an organization consisting of insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Though comprised of insurance regulators, the NAIC does not directly regulate insurance companies. Instead the NAIC establishes and reviews standards of best practices regarding insurance regulation on the state level. Model laws and regulations created by the NAIC are vetted and amended by member states before being adopted, but members are not required to adopt any model set forth by the NAIC.

The ORSA model regulation was developed by the NAIC in the wake of the most recent economic downturn of 2008. In November 2011, as part the NAIC Solvency Modernization Initiative (SMI), the NAIC voted to adopt the ORSA model, which went into effect on January 1, 2015. An ORSA requires insurance companies to issue their own assessment of current and future risk through an internal risk self-assessment process and allows regulators to form an enhanced view of an insurer's ability to withstand financial stress. If a member state of the NAIC votes to adopt the ORSA model, U.S. insurers and insurance groups would be required to regularly perform an ORSA and file a confidential ORSA Summary Report with the regulator of each insurance company upon request, and with the lead state regulator for each insurance group.

As of 2014, at least 31 states have adopted the NAIC ORSA model regulation.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

ORSA Requirements

1. Requires an insurer to maintain a risk management framework.
2. Requires an insurer or insurance group to regularly conduct an ORSA consistent with the ORSA Guidance Manual.

3. Requires an ORSA report to be submitted annually or when significant changes to the risk profile occur.
4. Requires insurers to submit an ORSA summary report to the Director of the Department of Insurance (Director), not more than once each year, upon the Director's request.
5. Requires an ORSA report to include a signature from an executive having responsibility for the oversight of the insurer's enterprise risk management process.
6. Allows an insurer to submit a substantially similar report to the Director of another state or regulator of a foreign jurisdiction.
7. Requires an ORSA summary report to be prepared consistent with the ORSA Guidance Manual, and that documentation be maintained and made available at the request of the Director.
8. Requires the review of ORSA summary reports and requests for additional information to be made using similar procedures relating to multistate or global insurers.

Exemptions

9. Exempts an insurer from submitting an ORSA if:
 - a) the insurer has an annual direct written and assumed premium of less than \$500 million; or
 - b) the insurance group has an annual direct written and assumed premium of less than \$1 billion.
10. Stipulates that if a single insurer qualifies for exemption, but belongs to an insurance group that does not qualify, an ORSA must include every insurer within the insurance group, but may include multiple insurers in a single report.
11. Stipulates that if a single insurer does not qualify for exemption, but belongs to an insurance group that does, an ORSA report may only be required for that insurer.
12. Allows an insurer who does not qualify for exemption to apply for a waiver of the requirements based on unique circumstances. The Director may consider the type and volume of business written, ownership and organizational structure or any other factor the Director considers relevant when deciding whether to grant a waiver.
13. Allows the Director to require an ORSA report, notwithstanding any exemptions, based on the following:
 - a) unique circumstances;
 - b) the possession of risk-based capital pursuant to risk-based capital systems statute;
 - c) if an insurer is deemed to be in hazardous financial condition pursuant to transaction of insurance business statute; or
 - d) exhibits qualities of a troubled insurer.

14. Specifies that if exemption status no longer qualifies for an insurer due to changes in premium, the insurer has one year after the year the changes took place to comply with the requirements.

Confidentiality

15. Recognizes any documents, materials, ORSA summary reports or other information disclosed to the Director as confidential, not considered public record and not subject to subpoena or admission as evidence in any private civil action. The Director may use information in the interest of regulatory or legal action brought, and may make information public with written consent by the insurer.
16. Prohibits the Director or any other person in possession of ORSA-related information from testifying in any private civil action concerning said information.
17. Allows the Director to share ORSA-related information with other state, federal and international regulatory agencies, with the NAIC, and other appropriate entities if the recipient agrees to maintain the confidentiality and privileged status of the documents.
18. Allows the Director to receive ORSA-related information from regulatory officials of foreign jurisdictions, the NAIC or other appropriate entities provided the confidential and privileged status of documents are maintained.
19. Requires the Director to enter into written agreements with the NAIC or another third-party consultant that do the following:
 - a) specify procedures and protocols regarding confidentiality and security of information shared with the NAIC;
 - b) specify that information shared with the NAIC is owned by the Director and shared at the Directors discretion;
 - c) prohibit the NAIC from permanently storing shared information;
 - d) give prompt notice to an insurer whose confidential information, in possession of the NAIC, is subject to a request for disclosure;
 - e) require the NAIC to consent to intervention by an insurer in any judicial action; and
 - f) require the insurer's written consent in the case of an agreement with a third party consultant.
20. Specifies that the sharing of information by the Director does not constitute a delegation of authority, and that the Director is responsible for the administration and enforcement of the provisions of the bill.
21. Specifies that disclosure to the Director does not constitute a waiver of any applicable privilege or claim of confidentiality.
22. Specifies that any documents in possession of the NAIC are confidential and are not considered public records.

Definitions

23. Defines *insurance group* as insurers and affiliates included within an insurance holding company system as defined by statute.
24. Defines *insurer* as every person engaged in the business of making contracts of insurance and does not include agencies, authorities or instrumentalities of the United States, its territories or the District of Columbia.
25. Defines *ORSA Guideline Manual* as the Own Risk and Solvency Assessment guideline manual adopted by the NAIC.
26. Defines *ORSA Summary Report* as a confidential high-level ORSA summary of an insurer or insurance group.
27. Defines *Own Risk and Solvency Assessment* as a confidential internal assessment that is conducted by that insurer or insurance group of the relevant risks associated with current business and the sufficiency of capital resources to support those risks.

Miscellaneous

28. Requires that any insurer who fails to file an ORSA summary report be fined \$500 for each day's delay in filing, not to exceed \$100,000. The Director may reduce the penalty if the insurer can demonstrate that the penalty would constitute financial hardship.
29. Contains a severability clause.
30. Becomes effective on January 1, 2017.

House Action

INS	1/27/16	DP	8-0-0
3 rd Read	2/16/16		60-0-0

Prepared by Senate Research
February 22, 2016
FB/ZD/rf